

REMARKS

Claims 1-4, 13-22 and 31-34 are presently pending in the case. Claims 1-4 have been amended. Though Applicant disagrees with the Examiner's rejections, claim 1 has been amended to recite the combination of features in order to expedite prosecution. Applicant reserves the right to continue to pursue the claims to the receptacle in a continuing application.

Allowable Claims

Applicant acknowledges with appreciation the Examiner's indication that claims 13-22 and 31-34 are allowable.

Independent claim 1

The Examiner rejected claims 1-4 under 35 USC §102(b) as being anticipated by U.S. Patent 5,723,189 to Sudo (hereinafter Sudo). The rejection is traversed.

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." In re Paulsen, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). "Invalidity on the ground of 'anticipation' requires lack of novelty of the invention as claimed ... that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim." Karsten Manufacturing Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383 (Fed. Cir. 2001). Thus, for a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention and the elements must be arranged as in the claim. Non-disclosure of a single element, feature or limitation of the claim or an arrangement other than that which is claimed negates anticipation.

Sudo does not anticipate independent claim 1. Claim 1 is to a system comprising a dry powder inhaler and a receptacle. These positively recited features are not disclosed by Sudo. Instead, Sudo is directed to liquid substances. Even though a powder container is disclosed in Figure 5, that powder is for subsequent dissolution (see column 21 line 50). Therefore, there is no disclosure, teaching or need for a dry powder inhaler. Since Sudo does not disclose each and every feature set forth in claim 1, it does not anticipate the claim. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereof under 35 USC §102.

Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 2-4 which depend from claim 1 and are not anticipated by Sudo for at least the same reasons as claim 1.

Conclusion

The claims are allowable for the reasons given above. Therefore, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

JANAH & ASSOCIATES

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By: _____



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